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BADRUL ZAMAN PS MD ZAKARIAH

v.

SUPERINTENDENT, PREVENTIVE DETENTION CENTRE, KAMUNTING & ORS

B

HIGH COURT MALAYA, KUALA LUMPUR
HISHAMUDIN MOHD YUNUS J
[CIVIL SUIT NO: S1-21-170-1994]
27 OCTOBER 2010

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PREVENTIVE DETENTION: *Detention order - Wrongful detention - Claim for damages - Extension of detention order declared unlawful and unconstitutional by court - Plaintiff already detained 300 days on extension order before release - Whether plaintiff could claim for damages*

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PREVENTIVE DETENTION: *Detention order - Extension of order - Validity - Plaintiff not served with grounds for extension order and allegations of facts on which extension order was based - Whether plaintiff's rights under s. 11 Internal Security Act 1960 prejudiced - Whether extension order unlawful and unconstitutional - Whether plaintiff could claim for damages*

E

WORDS & PHRASES: *"grounds" & "purposes" - Meaning and application in detention orders - Sections 8(1), (7) and 11(2) Internal Security Act 1960 - Interpretation by Court of Appeal and Federal Court in Gurcharan Singh Bachittar Singh v. Penguasa Tempat Tahanan Perlindungan Kamunting, Taiping & Ors - Karam Singh v. Menteri Hal Ehwal Dalam Negeri*

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The plaintiff was initially detained under a preventive detention order issued by the Deputy Minister of Home Affairs under s. 8(1) of the Internal Security Act 1960 ('ISA') for a period of two years. At the end of the two-year period, the Deputy Minister issued a direction for an extension order under s. 8(7) ISA extending the period of detention for another two years. The plaintiff aggrieved by the extension order filed an application for *habeas corpus* in 1994 at the High Court of Penang ('Penang High Court') against the same defendants herein. The plaintiff claimed that, unlike the first detention order, he was not served with the following: (1) a statement in writing of the grounds on which the extension order was made; and (2) the allegations of fact on which the extension order was based. He argued that his rights under

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s. 11 ISA was prejudiced, *ie*, to make a representation to an advisory board constituted under cl. (2) of art. 151 of the Federal Constitution ('Constitution'). The plaintiff succeeded in his application. The Penang High Court found the extension order unlawful and unconstitutional for non-compliance of ss. 8(7), 11 and 12 ISA and arts. 5(1) and 151(1) Constitution. However, by the time the plaintiff was released, he had already been detained under the extension order (declared unlawful by the Penang High Court) for a period of 300 days. The defendants had appealed against the grant of the *habeas corpus* application but subsequently abandoned their appeal. Therefore the Penang High Court ruling on the extension order as unlawful and unconstitutional stood to date. On the ground that the 1994 *habeas corpus* judgment and order evidenced the fact that his 300 days detention was unlawful, the plaintiff now filed this action against the defendants for damages for wrongful detention.

In opposing the plaintiff's claim for wrongful detention, the defendants argued that (1) the learned Judicial Commissioner ('JC') at the Penang High Court did not touch on the validity of the plaintiff's detention for the 300 days and therefore his release rightfully took effect after the *habeas corpus* order was issued and that rightfully, the plaintiff was released from detention a day after the issuance of the said order; and (2) that s. 8(1) ISA in fact set out the grounds of detention and that the word "grounds" in ss. 8(7) and 11(2)(b)(i) referred to the same "grounds" as set out in s. 8(1) following the majority decision by the Federal Court in *Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors ('Gurcharan Singh')*.

Held (allowing plaintiff's claim for damages):

(1) The defendants' argument that the learned JC did not touch on the validity of the plaintiff's further detention of 300 days contradicted the written judgment by the learned JC. From the learned JC's judgment, one could easily gather that he was at pains to explain that the further detention for 300 days was not valid and had given detailed reasons for so holding. Accordingly, on the undisputed fact that the plaintiff was further detained (purportedly under s. 8(7) ISA for 300 days and on the basis of the 1994 Penang High Court *habeas corpus* order), the court found for the plaintiff on the issue of liability. (paras 25 & 26)

(2) The case of *Gurcharan Singh* was decided after the Penang High Court *habeas corpus* order and was therefore irrelevant as it was not binding on this court. It had no bearing on the present case. The fact remained that the Penang High Court *habeas corpus* judgment and order had not been reversed by a higher court and therefore remained a valid judgment and order, irrespective of the ruling made by the Federal Court in *Gurcharan Singh*. The defendants must have deemed to have accepted the correctness and validity of the *habeas corpus* judgment and order since they had abandoned their appeal. Therefore, they were now estopped from questioning the correctness and validity of that judgment and order by citing the Federal Court case of *Gurcharan Singh* which was decided several years thereafter. (para 27)

(3) The three limbs for detention under s. 8(1) ISA (1) to prevent a person from acting in a manner prejudicial to the security of Malaysia; (2) to prevent a person from acting in a manner prejudicial to the maintenance of essential services in the country; and (3) to prevent a person from acting in a manner prejudicial to the economic life of the country, were meant to be the "purposes" of the detention order and not the "grounds" for it. Subsection (5) of s. 8 specifically referred to the three limbs in subsection (1) of s. 8 as "purposes" of the detention order. The judgment of the Federal Court in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri* had also ruled that the three limbs in s. 8(1) were to be interpreted as "purpose" or "purposes" of the detention. The word "grounds" used in ss. 8(7) and 11(2) could not be construed to mean "purposes" as specified in subsection (1) of s. 8. The word "grounds" instead referred to facts on which the particular purpose of the detention was based. (paras 40 & 41)

(4) The proper and correct interpretation of ss. 8 and 11 ISA could be found in the dissenting judgment of the Court of Appeal decision of *Gurcharan Singh* which referred to the three limbs in sub-s. (1) of s. 8 as "purposes" and not "grounds" for detention. Notwithstanding, the said case was irrelevant for the purpose of the present case in the light of the *habeas corpus* judgment and order obtained by the plaintiff in his favour which remained valid until today. If at all that

case was of some relevance, it was because of some parts of the Federal Court majority judgment supporting the dissenting view of the Court of Appeal judgment and thereby indirectly supporting the plaintiff's contention in the present case on the interpretation of ss. 8 and 11 ISA. (paras 43, 45 & 52)

(5) As to quantum, the award of RM20,000 per day would be fair and just by taking into consideration the fact that the plaintiff was deprived of his liberty unlawfully and contrary to the Constitution, and the fact that there was injury to his reputation both as an individual and as a businessman. That sum multiplied by the number of days the plaintiff was unlawfully detained would result in a sum of RM6,000,000. As that was a huge sum, a reasonable discount ought to be given to the defendants based on the sound principle that the longer the period of detention, the bigger the discount should be. In the present case a 50% discount was fair and reasonable. A 50% discount would arrive at a sum of RM3,000,000. (paras 54 & 55)

(6) On the authority of *Rookes v. Barnard*, the plaintiff should be awarded exemplary damages for two reasons: (1) that he had been deprived of his liberty unlawfully and unconstitutionally for a very long period of 300 days; and (2) that to invoke the ISA against the plaintiff for a second time after a two-year period of detention was harsh and oppressive on the part of the Deputy Minister and more so where the further detention was without any grounds whatsoever. The failure to furnish the plaintiff both with the grounds for detention and the allegations of fact were serious omissions and not mere technical mistakes. As far as the extension order was concerned, there had been an abuse of the ISA by the Deputy Minister. A sum of RM300,000 as exemplary damages should be awarded to the plaintiff. (paras 56 & 57

Case(s) referred to:

Abd Malek Hussin v. Borhan Hj Daud & Ors [2008] 1 CLJ 264 HC ***(refd)***

Abdul Ghani Haroon v. Ketua Polis Negara & Another Application [2001] 2 CLJ 709 HC ***(refd)***

Badrul Zaman PS Md Zakariah v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [1994] MLJU 1 ***(refd)***

Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors [1996] 4 CLJ 219 HC ***(refd)***

Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors [2002] 4 CLJ 249 FC ***(refd)***

A *Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors [2000] 1 CLJ 625 CA* ***(refd)***
Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia [1969] 1 LNS 65 FC ***(refd)***
Mohd Amin Mohd Yusoh v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1995] 1 CLJ 94 HC ***(refd)***
B *Reg v. Governor of Brockhill Prison, Ex p Evans (No 2) [1999] QB 1043* ***(refd)***
Rookes v. Barnard [1964] AC 1129 ***(refd)***
Thompson v. Commissioner of Police of the Metropolis [1998] QB 498 ***(refd)***

C **Legislation referred to:**
Evidence Act 1950, s. 43
Federal Constitution, arts. 5(1), 151(2)
Internal Security Act 1960, ss. 8(1), (5), (7), 11(2)(b)(i), 12

Other source(s) referred to:
D *McGregor on Damages,* para 37-008, p 1379

For the plaintiff - M Manoharan; M/s M Manoharan & Co
For the defendants - Iznan Ishak SFC; AG's Chambers

Reported by Usha Thiagarajah
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JUDGMENT

Hishamudin Mohd Yunus J:
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[1] The plaintiff's writ action against the defendants is for wrongful detention (the tort of false imprisonment) for a period of 300 days at the Preventive Detention Centre, Kamunting, by reason of a direction that was unlawful and unconstitutional
G issued by the Deputy Minister of Home Affairs purportedly pursuant to s. 8(7) of the Internal Security Act 1960 ('the ISA').

[2] The plaintiff claims for general damages and exemplary damages.

H **[3]** I am allowing the plaintiff's claim with costs. The following are my grounds.

I

The Background

[4] The plaintiff was initially detained under a preventive detention order issued by the Deputy Minister of Home Affairs on 12 September 1991. The order was issued under s. 8(1) of the ISA and it was for a period of two years.

[5] Section 8(1) of the ISA reads:

> **8. Power to order detention or restriction of persons.**
>
> (1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

[6] The detention order states the purpose of the detention: that the Minister was satisfied that it was necessary to make an order in respect of the plaintiff with a view to preventing him from carrying out activities in whatever manner prejudicial to the security of Malaysia.

[7] At the time that the detention order was served on him, in compliance with s. 11(2)(b) of the ISA, the plaintiff was also furnished with a statement in writing:

(i) of the grounds on which the order was made; and

(ii) of the allegations of fact on which the order was based,

so as to enable him to make representations against the order to an advisory board constituted under art. 151(2) of the Federal Constitution.

[8] The grounds for the detention order are exhibited in the agreed bundle of documents (absolute) and are summarised by Selventhiranathan JC (as he then was) in his unreported judgment in *Badrul Zaman bin P.S. Md Zakariah v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1994] MLJU 1; and the relevant portion of the judgment is as follows:

A The grounds on which the order was made stated that the applicant had, since April 1986 until his arrest on the 19th July 1991, voluntarily and knowingly participated in activities involving the falsification of Malaysian travel documents and that he had also arranged for the immigration of foreign nationals to third countries from Malaysia by using the documents which had been falsified by him and that by his activities he could prejudicially affect the security of Malaysia. The grounds were followed by the allegations of fact on which the order was based. These allegations of fact particularised the involvement of the applicant in the said prejudicial activities in seven detailed paragraphs.

C **[9]** The plaintiff is not challenging the validity of this initial ISA detention order. Hence, the validity of the initial ISA detention order is not an issue in the case before me.

D **[10]** However, towards the end of this two-year period of preventive detention, the Deputy Minister, on 11 September 1993, issued a direction (extension order) purportedly under s. 8(7) of the ISA extending the period of preventive detention for another two years with effect from 14 September 1993.

E **[11]** Subsection (7) of s. 8 of the ISA states:

(7) The Minister may direct that the duration of any detention order or restriction order be extended for such further period, not exceeding two years, as he may specify, and thereafter for such further periods, not exceeding two years at a time, as he may specify, either:

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(a) on the same grounds as those on which the order was originally made;

G (b) on grounds different from those on which the order was originally made; or

(c) partly on the same grounds and partly on different grounds;

Provided that if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under section 11 as if the order extended as aforesaid was a fresh order, and section 12 shall apply accordingly.

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I **[12]** The plaintiff is aggrieved by this extension order. It is the validity of this direction (extension order) that the plaintiff is now challenging in the present writ action.

The Plaintiff's Claim

[13] The plaintiff challenged the validity of this direction (extension order) on the grounds that he was only served with the direction (extension order), whereas, besides the direction (extension order), he should also have been served (together with the direction) with the following, namely:

(1) a statement in writing of the grounds on which the extension order was made; and

(2) the allegations of fact on which the extension order was based.

[14] It is further contended by the plaintiff that this failure on the part of the Deputy Minister to furnish the statement in writing of the grounds and the allegations of fact had prejudiced his rights under s. 11 of the ISA to make a representation to an advisory board constituted under cl. (2) of art. 151 of the Federal Constitution.

[15] By reason of the failure on the part of the Deputy Minister to serve on him the grounds for extending the detention and the allegations of fact, the plaintiff, in 1994, applied for a writ of *habeas corpus* at the High Court of Penang for his release contending that his continued detention was unlawful and unconstitutional. He succeeded in his application. The court in its judgment as mentioned earlier in this judgment *(Badrul Zaman bin P.S. Md Zakariah v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor)* granted the *habeas corpus* application and liberated him. Selventhiranathan JC ruled that the extended detention was unlawful and unconstitutional on the grounds that that there was non-compliance with the provisions of the ISA namely ss. 8(7), 11 and 12 and consequently of arts. 5(1) and 151(1) of the Federal Constitution. This is because the plaintiff, at the point of time when he was served with the extension order of his detention, had not been served with:

(1) a statement in writing of the grounds on which the extension order was made; and

(2) the allegations of fact on which the extension order was based.

[16] As he was not served with (1) and (2) above he had no idea as to whether his further detention was on the same grounds as his original detention; or was on different grounds. The Penang High Court ruled that it was legally important that he should know of the grounds of the further detention. This is because if the further detention was based partly or wholly on grounds that are different from the grounds of the original detention, then, under the proviso to s. 8(7) he is entitled to make a representation to the advisory board under s. 11 of the ISA. The proviso to s. 8(7) provides:

> Provided that if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under section 11 as if the order extended as aforesaid was a fresh order, and section 12(1) shall apply accordingly.

[17] Section 11 of the ISA provides for the right to make a representation before an advisory board. Section 11 reads:

> **11. Representation against detention order.**
>
> (1) A copy of every order made by the Minister under section 8(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations against the order to an Advisory Board.
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> (2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order:
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> (a) be informed of his right to make representations to an Advisory Board under subsection (1); and
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> (b) be furnished by the Minister with a statement in writing:
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> (i) of the grounds on which the order is made;
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> (ii) of the allegations of fact on which the order is based; and
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> (iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.

(3) The Yang di-Pertuan Agong may make rules as to the manner in which representations may be made under this section and for regulating the procedure of Advisory Boards.

[18] The unreported judgment of the learned Judicial Commissioner of the Penang High Court can be found at *Badrul Zaman bin P.S. MD Zakariah v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1994] MLJU 1. The well-reasoned judgment of Selventhiranathan JC, which I entirely agree with (except that he referred to the three limbs in s. 8(1) as 'reasons' instead of 'purposes'), is worth reproducing here:

Issue

The question for decision therefore was whether the omission to furnish the grounds on which the extension order was made and the allegations of fact on which the extension order was based was fatal to the continued detention of the applicant in the circumstances.

Encik Karpal Singh submitted that it was not disputed that the Minister of Home Affairs has the power under section 8(7) to direct that the duration of any detention order be extended indefinitely but not exceeding two years each time. However, if the extension order was not made on the same grounds and not based on the same allegations of fact as those on which the original detention order was made, the detainee has a right to make representations against his detention. Pursuant to section 11(2) the detainee should be furnished with the grounds and the allegations of fact to enable him to exercise his right to make representations to the advisory board constituted under Clause (2) of Article 151 of the Constitution. In this regard, he referred to my oral judgment in *Mak Muan Cheong v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia and another* (criminal application 44-13-1994 in the High Court in Malaya at Penang) delivered on the 27th July 1994 wherein I had so held, to support his contention.

He submitted further that a fundamental defect of the extension order here was that there was no indication whether the further detention of the applicant was directed on the same grounds as those on which the original detention order was made or otherwise as no grounds had been supplied in respect of the extension order. In his view there must be an indication of the grounds as well as the allegations of fact in respect of the extension order for section 11 to be complied with. Since there was a fundamental defect in the extension order by this omission,

A the court should make an order for the detainee to be produced and set free in court in accordance with the most recent decision of the Supreme Court in *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri and another* (Supreme Court criminal appeal 02-213-1992).

B Encik Noorbahri in reply sought to distinguish Mak Muan Cheong on the basis that the present issue had not been fully canvassed there and was now open for argument. ... He submitted that the details of the grounds on which the extension order in the present case was made were not stated in the extension order C because the original detention order contained the grounds. An extension order was merely a direction for the extension of the original detention order.

In his view, there was only one detention order for all intents and purposes and as the grounds were stated in that order this D sufficed in law. He placed reliance on the High Court decision in *Re Lim Thian Hok @ Lim Thiam Hock and 10 others v. Minister of Home Affairs and another* [1992] 4 CLJ 2289 @ 2291 paragraphs C-F [right column], wherein the stating on the grounds of detention in the alternative was held not to vitiate the detention orders. On appeal, the Supreme Court had held that there was E no need for the deletion of the alternative grounds of detention where it related to the same matter.

Arguing by analogy, Encik Noorbahri referred to paragraph 5 of the affidavit (enclosure (5)) of the deputy minister wherein he had F deponed that he was satisfied that the activities which had been carried out by the applicant could endanger and prejudicially affect the security of Malaysia. By reason thereof, he was satisfied that a detention order had to be made in respect of the applicant with a view to preventing him from acting in whatever manner that may prejudicially affect the security of Malaysia. Furthermore, the G deputy minister had said in paragraph 8 of his affidavit that after considering the information and report submitted to him recommending that the detention order in respect of the applicant be extended, he was satisfied that it was necessary to continue to detain the applicant with a view to preventing him from acting in H any manner whatsoever which may prejudicially affect the security of Malaysia.

Encik Noorbahri submitted that as the grounds on which the detention order was made had been stated therein, paragraph 8 of the affidavit was clear that the extension order must be read with I the relevant sections of the ISA and the affidavit of the deputy minister: *Chong Kim Loy v. Timbalan Menteri Dalam Negeri Malaysia and another* [1989] 3 MLJ 121 at 126 paragraphs D-H (left column).

Interpretation of law and application to facts

With respect, the contention of Encik Noorbahri that the grounds on which the detention order is made are the same as the reasons specified in section 8(1) emanates from a failure to appreciate the scheme of Chapter II of the ISA in which chapter that section appears. Section 8(1) requires the minister to be satisfied (ie subjectively in his mind) that the detention of any person is necessary with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or to any part thereof, or to the maintenance of essential services therein, or to the economic life thereof, as specified in that section. The minister's satisfaction as to one of these three limbs of section 8(1) being fulfilled would form the reason for the minister to order the detention of that person. However, the grounds for his detention would necessarily involve a recitation of the facts which motivated the minister to act under section 8(1). When those grounds and the allegations of fact supporting the grounds on which to make the detention order are not revealed or are non-existent, the minister cannot act in vacuo in exercising his power of preventive detention. If this is purportedly done (which certainly was not so in the present case), then it clearly would be an improper exercise of power because there would be no basis upon which to set in motion the power of detention under section 8(1). A careful examination of the detention order in the present case will show that the deputy minister had reason to act, *albeit* subjectively, under section 8(1) because he was satisfied of the existence of facts which gave grounds for him to invoke his powers under section 8(1) to make the detention order.

[19] The learned Judicial Commissioner then came to the following conclusion:

In the present case, before the applicant can even consider whether he should make any representations to the advisory board in exercise of his rights under the proviso to section 8(7) and under section 11, he has to first know on what grounds the extension order was made. In circumstances where he is not furnished with the statement of the grounds on which the extension order is made and of the allegations of fact on which the extension order is based, it would render nugatory the rights specifically conferred upon him by those provisions of the ISA and, in my view, it would also amount to a breach of Clause (1) of Article 151 of the Constitution which enjoins the detaining authority to inform the detainee of the grounds for his detention and the allegations of fact on which the detention order is based,

A and further gives him the right to make representations against the detention order to the advisory board. Paragraph (b) of Clause (1) of Article 151 of the Constitution categorically states that no citizen shall continue to be detained under any preventive-detention law unless the advisory board has considered any representations made by him and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations or within such longer period as the Yang di-Pertuan Agong may allow.

This right to make representations to the advisory board would be rendered meaningless if the applicant is not in a position to know the grounds on which the extension order is made. Encik Noorbahri's contention that the mere recitation of the particular limb of section 8(1) pursuant to which the extension order is made suffices to inform the applicant by implication that the extension order is made on the same grounds and is based on the same allegations of fact as the original detention order cannot be sustained for the simple reason that during the initial period of detention the grounds as well as the allegations of fact upon which the detention order was originally made may have ceased to exist through the rehabilitative process of the applicant or, on the other hand, may still be extant. Even if they have ceased to exist, yet fresh grounds and fresh allegations of fact may well arise justifying further detention, for example, where the detainee is seen to have links with forces outside the place of detention which may result in his acting in a manner prejudicial to the security of Malaysia or any part thereof if he were to be released.

In my view, all that the extension order has to state in its body is that it is made on the same grounds as those on which the original detention order was made for the detaining authority to have complied substantially with the requirements of sections 8(7), 11 and 12. The very fact that the deputy minister found it necessary to affirm an affidavit to this effect almost one year after making the extension order brings home clearly the denial to the applicant of his right to know on what grounds he was continuing to be detained so as to enable him to decide whether or not to exercise his constitutional right to make representations to the advisory board. As the extension order in the present case is silent as to the grounds on which it is made and as to the allegations of fact upon which the grounds are anchored, I find that the continued detention of the applicant is in contravention not only of sections 8(7), 11 and 12 and consequentially of Articles 5(1) and 151(1) of the Constitution in that he has been deprived of his personal liberty not in accordance with law.

[20] However, by the time the plaintiff obtained this order of release from the Penang High Court by way of *habeas corpus*, he had already been unlawfully detained under the purported direction (extension order) for a period of 300 days.

[21] Initially, the defendants in the *habeas corpus* proceeding (who are also the defendants in the present case) had appealed against the decision of the Penang High Court, but subsequently they abandoned the appeal. Hence the judgment of the Penang High Court, which had ruled that the plaintiff's extended preventive detention was unlawful and unconstitutional, stands until today.

On Liability

[22] The plaintiff relies on the 1994 *habeas corpus* order and judgment of the Penang High Court as evidence of the fact that his further detention of 300 days at the Preventive Detention Centre, Kamunting, was unlawful (see s. 43 of the Evidence Act 1950).

[23] The defendants in their statement of defence do not deny that the plaintiff was further detained (purportedly under s. 8(7) of the ISA) for a period of 300 days at Kamunting. They also do not deny the existence and validity of the 1994 Penang High Court *habeas corpus* order and judgment. However, they contend that the further detention pursuant to the extension order is still valid notwithstanding the *habeas corpus* order of 1994 by the Penang High Court. Paragraph 14 of the defendants' statement of defence states:

> 14. Defendan-Defendan mengakui setakat bahawa permohonan Plaintif untuk perintah *habeas corpus* telah dibenarkan oleh Mahkamah Tinggi Pulau Pinang pada 7.9.1994, lain-lain pernyataan Plaintif di dalam perenggan 15 Pernyataan Tuntutan Terpinda adalah dinafikan. Seterusnya Defendan-Defendan menyatakan walaupun Plaintif telah memperolehi perintah pembebasan dari Mahkamah Tinggi Pulau Pinang akan tetapi Defendan-Defendan tetap menegaskan bahawa Perintah Tahanan bertarikh 12.9.1991 dan Perlanjutan Perintah Tahanan bertarikh 14.9.1993 masih lagi sah.

[24] In his written submission, Encik Iznan Ishak, the learned senior federal counsel for the defendants, submits as to why the extended detention was valid as follows:

A Adalah dihujahkan oleh kerana keputusan Yang Arif Hakim di dalam alasan penghakiman kes *Badrul Zaman bin P.S. MD Zakariah v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1994] MLJU 1 tidak menyentuh mengenai penahanan plaintif selama setahun di dalam tempoh perlanjutan perintah maka permohonan *habeas corpus* hanya membenarkan plaintif tidak ditahan lebih lanjut selepas dari tarikh perintah *habeas corpus* dikeluarkan oleh Yang Arif Hakim di mana pada 7.9.1994 plaintif telahpun dibebaskan dari tahanan ISA iaitu selepas satu hari perintah *habeas corpus* dibenarkan.

[25] As I see it, the key words in the above submission are '... keputusan Yang Arif Hakim di dalam kes *Badrul Zaman* ... tidak menyentuh mengenai penahanan plaintif selama setahun di dalam tempoh perlanjutan perintah ...'. Now, can it be validly or rationally argued that the judgment of the Penang High Court in the *habeas corpus* proceeding did not touch on the validity of the further detention of the plaintiff for a period of 300 days (or one year as the learned senior federal counsel puts it)? I have set out the judgment of Selventhiranathan JC extensively in this judgment. With respect, clearly such an argument as advanced by the learned Senior Federal Counsel contradicts the judgment. For, as one could easily gather from the judgment, the learned Judicial Commissioner, in his written grounds of judgment, was at pains to explain that that the further detention of 300 days was not valid and he gave his reasons in detail for so holding. In fact, this is the crux of his judgment.

[26] Accordingly, based on the undisputed fact that the plaintiff was further detained (purportedly under s. 8(7) of the ISA) for 300 days at Kamunting, and on the basis of the 1994 Penang High Court *habeas corpus* order, on the issue of liability, I find for the plaintiff.

The Defence Argument

[27] In opposing the plaintiff's claim for wrongful detention, the defendants rely on the Federal Court case of *Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors* [2002] 4 CLJ 249. In my judgment, this case cited by the defendants, decided after the Penang High Court order granting the writ of *habeas corpus* to the plaintiff, is irrelevant as it is not binding on this court and has no bearing on

the present case. The facts remains that the Penang High Court *habeas corpus* order and judgment, until today, have not been reversed by a higher court, and, therefore, they remain until today a valid judgment and order, no matter whatever ruling the Federal Court makes in *Gurcharan Singh*. Moreover, as I have said earlier, the defendants had abandoned their appeal against the 1994 Penang High Court *habeas corpus* order and judgment. Therefore, the defendants must be deemed to have accepted the correctness and validity of the *habeas corpus* judgment and order. They are now estopped from questioning the correctness and validity of the 1994 Penang High Court order and judgment by citing the Federal Court case of *Gurcharan Singh* which was decided several years after the 1994 Penang High Court *habeas corpus* judgment and order.

[28] Furthermore, the judgment of the Federal Court in *Gurcharan Singh* is unclear and appears (with the greatest respect and in all humility) to be self-contradictory. With respect, Ahmad Fairuz FCJ (as he then was), who delivered the judgment of the Federal Court, on the one hand, having said in his judgment that he agreed with the dissenting judgment of Abdul Malek Ahmad JCA (as he then was) at the Court of Appeal level (the judgment of the Court of Appeal can be found in *Gurcharan Singh Bachittar Singh v. Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors* [2000] 1 CLJ 625) in that, following *Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia* [1969] 1 LNS 65, the purposes set out in s. 8(1) of the ISA are not grounds but purposes and that purposes and grounds (as referred to in s. 8(7) and s. 11(2)(b)(i) of the ISA) are two different things (and Abdul Malek Ahmad JCA's dissenting judgment supports the view of Selventhiranathan JC in the *habeas corpus* judgment), logically, cannot at the same time also say in his judgment that he agreed with the judgment of NH Chan JCA (whose judgment is one of the majority judgments at the Court of Appeal) that s. 8(1) in fact sets out the three grounds (as opposed to purposes) and that the word 'grounds' in s. 11(2)(b)(i) and s. 8(7) refers to the same 'grounds' as set out in s. 8(1).

An Analysis Of Gurcharan Singh

[29] In *Gurcharan Singh* the facts are different but the legal issue is quite similar as the issue in the present case. In that case, the initial detention order of the detainee *(Gurcharan Singh)* states the

s. 8(1) purpose for the detention: with a view to preventing the (detainee/plaintiff) from acting in any manner prejudicial to the security of Malaysia. That is all. In fact in stating the purpose the Minister is merely parroting one of the limbs in subsection (1) of s. 8 of the ISA. At the same time the detainee/plaintiff was also furnished pursuant to s. 11(2)(b)(i) with the grounds for the detention order. The grounds are as follows:

Grounds For Detention

> That you, Gurcharan Singh a/l Bachittar Singh @ Guru, since the month of November 1986 up to October 1988, had involved yourself actively in an espionage activity for a foreign nation against Malaysia where in a knowing and voluntary manner you had traded classified information concerning the Armed Forces of Malaysia to an intelligence officer from an intelligence agency in Singapore. Your action is not only high treason towards the nation but is also prejudicial to the security of Malaysia.

[30] However, when the detention was further extended by the Minister after the expiration of the initial two-year period of detention, the grounds for extending the period of the detention were not furnished to him as required by the proviso to subsection (7) of s. 8: only the purpose of the further detention was stated in the extension order; and the purpose of the further detention as stated in the extension order is the same as the purpose as stated in the original detention order, that is, with a view of preventing the detainee/plaintiff from acting in any manner prejudicial to the security of Malaysia. Nowhere in the extension order was the detainee/plaintiff informed that he was further detained on the same grounds as his initial detention.

[31] Gurcharan Singh is not a *habeas corpus* proceeding but a writ action; and the writ action was filed by the detainee/plaintiff after he was freed from detention, that is, after the Minister of Home Affairs had on 2 February 1993 ordered that the initial detention order and the extended order be cancelled with effect from 5 February 1993.

[32] Before the High Court, James Foong J (as he then was) took the same position as taken by Selventhiranathan JC in the present case at the *habeas corpus* proceeding. In fact the learned judge referred to the judgment of Selventhiranathan JC. James

Foong J declared that the extension order was null and void. The learned judge ruled that a detainee must be made aware of whether he can exercise his right to make representations. Before he can do so, it must be disclosed to him on what grounds he is further detained. The extension order therefore must list the grounds regardless of whether the grounds are the same as, different or partly different from those in the initial detention order. The learned judge followed *Mohd Amin Mohd Yusoh v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1995] 1 CLJ 94.

[33] The sound decision of James Foong J in Gurcharan Singh was overruled by the Court of Appeal by a majority judgment. The majority judgment took the view that the purpose of the detention order as provided by s. 8(1) of the ISA and as stated in the initial detention order of Gurcharan Singh is in fact and in law the 'grounds' of the detention order; and since the purpose as set out in the extention order is the same as the purpose as set out in the initial order, therefore, the 'grounds' of the extension order are the same as the 'grounds' as in the initial detention order; and since the 'grounds' are the same, therefore, there is no question of the detainee/plaintiff not being furnished with the grounds as required by s. 11(2)(b)(i) of the ISA. With the greatest respect and in all humility I must say that this reasoning is rather perplexing, confusing and cannot be correct in law. One must not confuse the purposes as stipulated in s. 8(1) of the ISA with the grounds as required by s. 8(7) and by s. 11(2)(b)(i) of the ISA.

[34] At the Court of Appeal, the three judges of the panel each wrote a separate judgment. NH Chan and Mokhtar Sidin JJCA each wrote the majority judgment. Abdul Malek Ahmad JCA (as he then was) wrote the dissenting judgment. NH Chan JCA, in his judgment, referred to the three limbs (that is the three purposes for detention) in s. 8(1) of the ISA as the 'grounds' for detaining a person by the Minister, rather than as the purposes of the detention. In the words of the learned judge:

> Under section 8(1) there are three grounds or reasons for which a person can be detained under the ISA. These grounds or reasons for detaining a person are necessary, according to the ISA, to prevent such a person from acting in a manner that would be prejudicial to the security of Malaysia or to the maintenance of

essential services in the country or to the economic life of the country. So that, if the Minister thinks that the detention of the person is necessary for any one of those three grounds or reasons, he can make an order for that person's detention for up to two years under the ISA.

[35] With respect, in my view, it is here that the problem of interpretation began – the problem of construing the purposes (the three limbs: (1) to prevent a person from acting in a manner prejudicial to the security of Malaysia; (2) to prevent a person from acting in a manner prejudicial to the maintenance of essential services in the country; and (3) to prevent a person from acting in a manner prejudicial to the economic life of the country) of the detention under s. 8(1) as the 'grounds' for the detention.

[36] Having construed the three limbs for the detention as specified in s. 8(1) as being the 'grounds' for the detention rather than as the purposes of the detention, the learned judge then went on to explain what is meant by the word 'grounds' in s. 11(2) in the following manner:

> At the same time he must also be furnished by the Minister with a statement in writing of the grounds on which the order was made (section 11(2)(b)(i)), the allegations of fact on which the order was based (section 11(2)(b)(ii)), and any other particulars that the Minister might wish to let him have (section 11(2)(b)(iii)).
>
> As required by section 11(2)(b) the plaintiff was furnished with a written statement of the grounds on which the detention order was made and the allegations of fact on which the order was based. This document (the translation of it) reads:
>
> STATEMENT UNDER SECTION 11(2)(b)
>
> INTERNAL SECURITY ACT 1960
>
> Name of Detainee: GURCHARAN SINGH S/O BACHITTAR SINGH @ GURU
>
> Identity Card Number: 704531 (T)
>
> **GROUNDS FOR DETENTION**
>
> That you, GURCHARAN SINGH A/L BACHITTAR SINGH @ GURU, since the month of November 1986 up to October 1988, had involved yourself actively in an espionage activity for a foreign nation against Malaysia where in a knowing and voluntary manner

> you had traded classified information concerning the Armed Forces of Malaysia to an intelligence officer from an intelligence agency in Singapore. Your action is not only high treason towards the nation but is also prejudicial to the security of Malaysia.
>
> Strictly speaking, the written statement under section 11(2)(b) should give (i) the grounds on which the detention order was made, and (ii) the allegations of fact on which the detention order was based. The grounds on which the detention order was made were the grounds that were given for his detention under section 8(1). But in the present case, only the allegations of fact were given in the statement. It merely said that he had been involved in activities that were prejudicial to the security of Malaysia. The ground or reason for his detention under s. 8(1) which was to prevent him from acting in that manner as it would be prejudicial to the security of Malaysia was not given in the statement. It could, however, be inferred when the allegations in the statement referred to the activities of the plaintiff as being prejudicial to the security of Malaysia.

[37] Justice NH Chan then went on to deal with the extension order and to rule that the extension order did contain the grounds for the further detention because the extension order did state that the Minister was satisfied that the plaintiff's activities were prejudicial to the security of Malaysia. Although this is merely a recitation of the purpose of the further detention, nonetheless, in his lordship's view, this is the 'grounds' and it was not correct to say that there was no ground given.

[38] It can be seen from the above passage that from Justice NH Chan's standpoint, what is meant by 'grounds' in s. 11(2) has to be (what I consider to be) the purposes (for the issuance of the detention order) specified in s. 8(1). As we have seen earlier the learned judge had construed the three limbs in subsection (1) of s. 8 to mean the 'grounds' for the detention rather than as the purposes of the detention. But with respect the difficulty with such an interpretation as adopted by the learned judge is that if his lordship's interpretation is correct then logically the statement entitled 'GROUNDS FOR DETENTION' served on Gurcharan Singh (the plaintiff/appellant) must mention the words 'with a view of preventing the (detainee/plaintiff) from acting in any manner prejudicial to the security of Malaysia'. But the statement contains no such words, and the learned judge realised this when he said:

A The ground or reason for his detention under s. 8(1) which was to prevent him from acting in that manner as it would be prejudicial to the security of Malaysia was not given in the statement.

B **[39]** But this does not appear to be a problem to his lordship: for the learned judge went on to 'infer' from the statement (which to the learned judge are merely 'allegations of fact' and did not contain the grounds) the 'grounds' for the further detention. For, as can be seen from the above passage, the learned judge, went on to say:

C It could, however, be inferred when the allegations in the statement referred to the activities of the plaintiff as being prejudicial to the security of Malaysia.

D **[40]** Although I am duty-bound to respect the view as expressed by the learned judge of the Court of Appeal, however, with regard to the above reasoning, regretfully, I must, with the greatest respect, beg to differ. At the outset I must say that the reasoning is rather confusing. In my opinion, under the scheme of the ISA provisions, the three limbs as specified in subsection (1) of s. 8 E are meant to be the purposes of the detention order and not the grounds for the detention order. Such an interpretation as adopted by NH Chan JCA (that the purposes in s. 8(1) are 'grounds') fails to take into account subsection (5) of s. 8 of the ISA and the judgment of Suffian FJ (as he then was) in the Federal Court case F of *Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia* [1969] 1 LNS 65. Subsection (5) of s. 8 refers to the three limbs as specified in subsection (1) of s. 8 for issuing a detention order as the 'purposes' of the detention order; and the judgment of the Federal Court in *Karam Singh* had also G ruled that the three limbs in s. 8(1) are to be interpreted to mean the 'purpose or purposes' of the detention.

[41] To my mind, the word 'grounds' as used in ss. 8(7) and 11(2) cannot be construed to mean the purposes as specified in H subsection (1) of s. 8. Instead it refers to facts on which the particular purpose of the detention is based. I shall illustrate: for example, to prevent A (who is issued with a detention order under s. 8(1)) from acting in any manner prejudicial to the security of Malaysia is the purpose of the detention order issued against A. I But these words of mine in italics are not the grounds for the

detention: they are the purpose for the detention. So, what then are the grounds for A's detention for the purpose of ss. 8(7) and 11(2)? The grounds would be (for example) that A has organised an uprising comprising approximately 1000 armed men with the intention of overthrowing the Government by force. In other words, the 'grounds' in ss. 8(7) and 11(2) cannot be the same thing as the 'purpose' in s. 8(1).

[42] With the greatest respect and in all humility I am also unable to associate myself with the position taken by NH Chan JCA that what are stated in the statement entitled 'GROUNDS FOR DETENTION', notwithstanding the wording of the title and the content of the statement, are not the grounds for the detention but mere 'allegations of fact' and that the statement merely said that the plaintiff/detainee had been involved in activities that were prejudicial to the security of Malaysia. The statement of the Minister clearly states that what are set out in the statement are the 'Grounds for Detention'. Some facts are furnished by the Minister and they are meant to be the grounds. There is no basis for the court to dispute the intention of the Minister and to treat or to regard the grounds for detention as mere allegations of fact, and to downplay the significance of the contents of the statement.

[43] In my opinion, the proper and correct interpretation of ss. 8 and 11 of the ISA can be found in the dissenting judgment of Abdul Malek Ahmad JCA at the Court of Appeal. On the issue as to whether, in the case of a detainee being served with an extension order, he must also be furnished with the grounds, Abdul Malek Ahmad JCA, in his dissenting judgment, said:

> Leading Senior Federal Counsel for the respondents argued that for an extension order which is based on the same grounds for detention as in the detention order, the grounds for detention need not be stated in the extension order as they are implied.
>
> I find this line of argument quite difficult to accept for nowhere is this suggested in sub-s. (7) of s. 8 of the Act. In my view, reading and re-reading the said provision, whether the grounds for detention in the extension order are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order, the grounds for detention must be stated before the proviso to that subsection can come into effect. There is certainly no suggestion at all that where the

A grounds for detention are the same in the extension order as in the detention order, they need not be stated as they are implied. At the very least, the person under detention should be informed in writing that the grounds for detention in the extension order are the same as the grounds for detention in the detention order even if they are not so stated specifically.

B

[44] At a later part of his judgment, the learned judge said:

What about an extension order, as in this appeal, under sub-s. (7) of s. 8 of the Act? The proviso says that if a detention order is extended on different grounds or partly on different grounds, the person to whom it relates shall have the same rights under section 11 of the Act as if the order extended was a fresh order.

C

Does this then mean that where the grounds for detention in the extension order are the same as the grounds for detention in the detention order, then the person detained is not entitled or loses his entitlement to make representations? This appears to be the only conclusion one can draw from the relevant provisions in the Act but this is the more reason why it is imperative that the grounds for detention must be stated for all extension orders so that the person detained after the expiry of the detention order will be able to know whether he can make any representations at all based on the grounds for detention stated in the extension order whether they are the same as, different from, or partly the same as and partly different from, the grounds for detention in the detention order.

D

E

F

...

Since the grounds for detention have not been stated in the extension order, I would agree with the learned trial judge that the extension order is invalid.

G

[45] Are the three limbs in subsection (1) of s. 8 meant to be the grounds for detention? Or are they meant to be the purposes of the detention order? Abdul Malek Ahmad JCA was of the opinion that they are purposes and not grounds for the detention. His lordship's view on the interpretation is clearly expressed as follows:

H

I would like to stress the point that "purposes" and "grounds" are two different things. The purposes are as stated in subsection (1) of section 8 of the Act but the grounds for detention must be given in the statement in writing as provided for in subparagraph (1) of paragraph (b) of subsection (2) of section 11 of the Act together with the allegations of fact and other particulars as stated in subparagraphs (ii) and (iii) of that same paragraph.

I

> Accordingly, the words "the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof" in subsection (1) of section 8 of the Act are definitely not the grounds for detention but only the purposes for the detention.
>
> My view is strengthened by the use of the word "purposes" in subsection (5) of section 8 of the Act which begins with "If the Minister is satisfied that for any of the purposes mentioned in subsection (1) ...". So when the words "acting in any manner prejudicial to the security of Malaysia" appear in both the detention order and the extension order, they do not qualify as a ground for detention but only as a purpose for the detention.

[46] It is to be noted that Abdul Malek Ahmad JCA referred to subsection (5) of s. 8 of the ISA. This provision reads:

> (5) If the Minister is satisfied that for any of the purposes mentioned in subsection (1) it is necessary that control and supervision should be exercised over any person or that restrictions and conditions should be imposed upon that person in respect of his activities, freedom of movement or places of residence or employment, but that for that purpose it is necessary to detain him, he may make an order (hereinafter referred to as 'a restriction order') imposing upon that person all or any of the following restrictions and conditions: ...

[47] In support for his view, Abdul Malek Ahmad JCA referred to the Federal Court case of *Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia* [1969] 1 LNS 65; [1969] 2 MLJ 129 at p. 147 wherein Suffian FJ (as he then was) said:

> It seems to me that there has been confusion in this matter by Dato' Marshall's frequent use throughout his arguments of the word "grounds". In my judgment, the words "with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein" in section 8(1)(a) of the Internal Security Act do not indicate the grounds for a person's detention; they indicate its purpose or purposes. It is true that the grounds for a person's detention must be given, but grounds are quite distinct from purposes. The Minister has given the grounds for the appellant's detention in Exhibit A1. These

A grounds are quite distinct from the purposes stated in the order of detention and when the two are read together there is in my opinion no conflict or discrepancy between them. Put in different words, what the grounds supplied and the order of detention say is this: because (grounds) you the appellant have since 1957 consistently acted in a manner prejudicial to the security of Malaysia, the Yang di-Pertuan Agong is satisfied that it is necessary to direct that you be detained with a view to (purposes) preventing you from acting in any manner prejudicial to the security of Malaysia or to the maintenance of public order or to the maintenance of essential services in Malaysia. It is true that the grounds use a phrase which occurs in the order of detention and in section 8 of the act and Dato' Marshall has fastened on the alleged discrepancy between the language of the grounds and the order of detention. But in my judgment there is no need for the grounds to be identical with any or all of the purposes of detention. The grounds supplied could be in words totally different from the statement of the purposes of detention.

[48] Being dissatisfied with the majority decision in the Court of Appeal, the plaintiff (Gurcharan Singh) appealed to the Federal Court. Although the Federal Court dismissed his appeal, nonetheless it is significant to note for the purpose of the present case that the Federal Court appears to agree substantially with the dissenting judgment of Abdul Malek Ahmad JCA (which referred with approval to the view of Selventhiranathan JC in the *habeas corpus* judgment of the present case). Ahmad Fairuz FCJ in delivering the judgment of the Federal Court said:

> For the reasons given by the learned judge (Malek Ahmad JCA) I agree that s. 8(1) merely specifies the three purposes for detention. Thus in the context of the aforementioned relevant provisions of the Act, the grounds must mean the grounds referred to in s. 11 of the Act which reads:
>
> **11. Representations against detention order**
>
> (1) A copy of every order made by the Minister under section 8(1) shall as soon as may be after the making thereof be served on the person to whom it relates, and every such person shall be entitled to make representations against the order to an Advisory Board.
>
> (2) For the purpose of enabling a person to make representations under subsection (1) he shall, at the time of the service on him of the order:

(a) be informed of his right to make representations to an Advisory Board under subsection (1); and

(b) be furnished by the Minister with a statement in writing:

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representation against the order to the Advisory Board.

(3) The Yang di-Pertuan Agong may make rules as to the manner in which representations may be made under this section and for regulating the procedure of Advisory Boards.

As section 11(1) makes reference to s. 8(1), it would therefore be appropriate for me to cite the section. Section 8(1) reads:

8. Power to order detention or restriction of persons

(1) If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

I find nothing in s. 8(1) that can indicate that grounds are to be stated in the detention order. I have also read through carefully the other subsections of s. 8 and found that only s. 8(7) makes mention of "grounds". I had, at the outset of my judgment, quoted s. 8(7) of the Act. The proviso to s. 8(7) unequivocally specifies that those whose detentions have been extended on different grounds or partly on different grounds are entitled to exercise the same rights under s. 11 as if the extended orders are initial orders. In other words, they are entitled to make representations against the extension orders to the Advisory Board.

A Such entitlement would invoke the application of s. 11(2)(b) which, *inter alia*, requires the detainee to be furnished with a statement in writing of the grounds on which the extension order was made. The very existence of s. 11(2)(b)(i) would clearly support my view that the initial orders under s. 8(1) and the extension orders under s. 8(7) need not specify the grounds. Otherwise s. 11(2)(b)(i) would be redundant.

[49] Thus, Ahmad Fairuz FCJ accepts the view of Abdul Malek Ahmad JCA that s. 8(1) of the ISA merely specifies the purposes for the detention, and not the grounds; and that the word 'grounds' in ss. 8(7) and 11(2)(b)(i) cannot mean the same thing as the purposes specified in s. 8(1): it means something else other than the purposes as specified in s. 8(1). Unfortunately, having said the above, Ahmad Fairuz FCJ, however, went on to state:

D Anyway, I cannot find anything in s. 8(7) that can even suggest that the grounds must be stated in the extension order. If grounds are not expected to be stated in the initial order how can then it be expected that they, should be in the extension order when that extension order merely directs that the duration of the detention order be extended for a certain further period not E exceeding two years at a time? As such, I am of the view that it is not necessary to state the grounds in the extension order. In the circumstances the appellant's contention that the grounds must be stated in the extension order is without merit.

F Having held that grounds need not be stated in the extension order the question that how arises is whether the appellant is entitled to be served with the statement under s. 11(2)(b)(i) of the Act? It is obvious from the proviso to s. 8(7) that the appellant is entitled to the statement if the extension order is made on grounds different from those stated in the initial order or if G the extension order is made partly on the same grounds and partly on different grounds from those stated in the initial order. This is so because the proviso stipulates that under those circumstances the extension order is to be considered as if it was a fresh order and hence the appellant is entitled to make representations to the advisory board under s. 11 of the Act. And H the statement is required by s. 11(2)(b)(i) of the Act. This evidently means that if the extension order is made on the same grounds then the order is not deemed a fresh order and therefore no question of representation under s. 11 arises and consequently no statement under s. 11(2)(b)(i) is required. Simply stated, a I statement under s. 11(2)(b)(i) of the Act need not be made in cases where the extension order is made on the same grounds as those on which the initial order was made.

[50] Now the learned judge makes a finding that the 'grounds' for the extension order issued in respect of the plaintiff/appellant are the same as the 'grounds' for the initial detention order. With the greatest respect, I humbly say that this is rather perplexing. But how did his lordship come to such a finding? For such a finding, the learned judge now refers to the judgment of NH Chan JCA at the Court of Appeal. He said:

> On this issue I am in agreement with NH Chan JCA's view as quoted above. For the reasons stated above, my answer to the question referred to this court is in the affirmative ie, the extension order is a valid order.

[51] With respect, I find great difficulty in reconciling this part of the judgment of Ahmad Fairuz FCJ with the earlier part of his lordship's judgment. If he had agreed with the interpretation on ss. 8(1), 8(5), 8(7) and 11(2)(b)(i) of the ISA as given by Abdul Malek Ahmad JCA (particularly, that part of the judgment of Abdul Malek Ahmad JCA that states that s. 8(1) when read with s. 8(5) provides for the purposes of the detention and not the grounds for the detention; and that the word 'grounds' in s. 11(2)(b)(i) and s. 8(7) means something else, and that 'grounds' are distinct from 'purposes'), he cannot in the same breath say that he also agreed with the interpretation as given by NH Chan JCA that the word 'grounds' in s. 11(2)(b)(i) and s. 8(7) means the purpose or purposes for detention specified under s. 8(1).

The Relevance Of Gurcharan Singh

[52] Be that as it may, having said the above, I, however, wish to reiterate what I have said earlier in this judgment that the case of *Gurcharan Singh* is irrelevant for the purpose of the present case in the light of the *habeas corpus* order and judgment obtained by the plaintiff in his favour which order and judgment until today remains a valid order and judgment. But if at all the case of *Gurcharan Singh* is of some relevance it is because of the dissenting judgment of Abdul Malek Ahmad JCA (in the Court of Appeal) and some parts of the judgment of the Federal Court that supports the view of Abdul Malek Ahmad JCA and thereby indirectly supports the contention of the plaintiff in the present case on the interpretation of ss. 8 and 11 of the ISA.

A **On Quantum**

[53] As to the quantum, Encik M. Manoharan, the learned counsel for the plaintiff submits that the court should award a sum of RM25,000 per day, with a discount of 50% to be given to the
B total sum, citing my decision in *Abd Malek Hussin v. Borhan Hj Daud & Ors* [2008] 1 CLJ 264. Encik Iznan bin Ishak, the learned senior federal counsel for the defendants, on the other hand, submitted that the court should award only a nominal sum of RM10 citing the High Court decision in *Gurcharan Singh*
C *Bachittar Singh v. Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors* [1996] 4 CLJ 219. On my part I do not propose to follow these decisions as they have, on appeal, been reversed by the respective Court of Appeal.

D **[54]** In my judgment, upon perusing the authorities (*McGregor on Damages*, para 37-008, p. 1379, under heading 'False Imprisonment'; *Thompson v. Commissioner of Police of the Metropolis* [1998] QB 498; and *Reg. v. Governor of Brockhill Prison, Ex p. Evans (No. 2)* (CA) [1999] QB 1043) which at best could only
E be rough guides (and there appears to be a dearth of local authorities directly on point), I think an award of RM20,000 per day would be fair and just. Besides taking into account the fact that the plaintiff had been deprived of his liberty unlawfully and contrary to the Constitution, there is also the element of injury to
F his reputation both as an individual and as a businessman to consider.

[55] If we were to multiply this sum of RM20,000 by 300 (that is the number of days that the plaintiff was unlawfully detained) we will arrive at the sum of RM6,000,000. But this is a huge sum
G – simply because of the long number of days. Hence, to be fair to the defendants, a reasonable discount ought to be given to them; and I think it is a sound principle that the longer the period of detention, the bigger should be the discount. In the present case, I think, giving a 50% discount would be fair and reasonable.
H And if a 50% discount were to be given, we will arrive at the sum of RM3,000,000.

[56] In my judgment, the plaintiff should also be awarded exemplary damages based on *Rookes v. Barnard* [1964] AC 1129.
I This is because of two reasons. Firstly, what was done by the defendants towards the plaintiff was not only unlawful but was

also unconstitutional. He had been deprived of his liberty unlawfully and unconstitutionally for a very long period of 300 days. Secondly, to invoke the ISA against the plaintiff once again after the initial two-year period of preventive detention that he had served is, I think, a harsh and oppressive act on the part of the Deputy Minister; and all the more so where the further detention was without any grounds whatsoever. The failure to furnish the plaintiff with the grounds for detention and the allegations of fact are serious omissions and not mere technical mistakes. As far as the extension order is concerned, to my mind, there has been an abuse of the ISA by the Deputy Minister. In this regard I think it would not be out of place to repeat what I have said some ten years ago in *Abdul Ghani Haroon v. Ketua Polis Negara & Another Application (No 3)* [2001] 2 CLJ 709:

> ... with the greatest respect and in all humility, perhaps it is high time for Parliament to consider whether the ISA, which was originally meant to counter Communist terrorism in the early years of our Independence, is really relevant to the present day situation of this nation of ours; or, if at all it is to be retained, at least whether its provisions need to be thoroughly reviewed to prevent or minimise the abuses which I have highlighted in this judgment.

[57] (In this case of *Abdul Ghani Haroon*, the appeal to the Federal Court by the Attorney-General on behalf of the Inspector-General of Police was subsequently withdrawn.) In the circumstances, I am awarding a sum of RM300,000 as exemplary damages to the plaintiff.

[Plaintiff's claims for general and exemplary damages are allowed with costs.]